IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 386 of 2002
With
CIVIL APPLICATION No.6561 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOTIBAI CHARITY TRUST FUND

Versus

KERSY KAIKHUSHRU DOCTOR

Appearance:

1. Appeal from Order No. 386 of 2002

MR UNMESH D SHUKLA for Petitioner No. 1-5

MR MB GANDHI for Respondent No. 1-4

MRS TRUSHA M GANDHI for Respondent No. 1-4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 18/02/2003

ORAL JUDGEMENT

#. The appellants are the original plaintiffs of Civil Suit No.81 of 2001. The said suit is filed for a declaration and injunction. In the said suit, an application for interim injunction was submitted by the plaintiffs and it is prayed that, during the pendency of the suit, the defendants may be restrained from obstructing, preventing or interfering with the plaintiffs, their agents and servants from using the open compound and other portion of Dr.Motibhai Charity Blocks for access to Zoroastrian Hall and other purposes.

#. The said suit is resisted by the defendants on various grounds. The injunction application was also contested on various grounds by the defendants. By the impugned order, the trial Court, thereafter, rejected the Notice of Motion. Being aggrieved by the said order, the original plaintiffs have filed this Appeal, which is admitted by this Court.

#. Today, at the time of hearing of this appeal, learned advocates of both the sides have submitted suggested formula in order to solve the problem at the interim stage. They submitted that the said document can be treated as a purshis, which is signed by two Trustees, who are the original plaintiffs in the suit, and on behalf of the defendants, one defendant has also signed the said purshis. Mr.Gandhi pointed out that, since other defendants were not available for signature, the aforesaid purshis is signed by only one defendant and according to him, all other defendants are agreeable to the suggested formula. The defendant No.4 Mr.Kadodwala is also present in the Court whom Mr.Gandhi has identified. The aforesaid purshis is taken on record. In view of the consensus prevailing between the parties and with the consent of the parties, the following order is passed.:-

During the pendency of Civil Suit No.81 of 2001, the appellants shall not allow the use of the disputed passage and the gate except in connection with non-vegetarian dinners at Zoroastrian Hall and for the purposes incidental thereto or connected therewith and the appellants shall keep the disputed gate locked and closed except for the aforesaid purposes.

In that view of the matter, now nothing further is required to be done in this appeal, as, interim controversy is settled by the parties in view of the aforesaid purshis submitted before this Court. The parties shall abide by the same during the pendency of

Civil Suit No.81 of 2001. In the facts and circumstances of the case, the learned trial Judge is directed to dispose of Civil Suit No.81 of 2001 as early as possible and preferably by 31.12.2003, as, the dispute is in the narrow compass. This appeal is accordingly disposed of.

#. In view of the above order, Civil Application No.6561 of 2002 stands disposed of accordingly. Rule is discharged. Ad-interim relief granted earlier stands vacated subject to what is stated above.

(P.B.Majmudar,J)
(pathan)